IN THE HIGH COURT OF JUDICATUE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No.460 of 2007
Shgriram G. Pawar(Dead) through LR's Prabhakar S. Pawar and others
vs.
Ramawatar G. Kanungo.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Courts or Judge's Orders.

CORAM : Smt. Vasanti A. Naik, J.
Dated : 12/09/2007

Heard Shri S.S. Doifode, learned counsel for the appellants.

The appellant is the original plaintiff. A suit was filed by the plaintiff for grant of permanent injunction restraining defendant from making any construction on the customary way, which was used by the plaintiff to approach his house. It was the case of the plaintiff that the suit way was the only way, available to the plaintiff to approach to his house.

The defendant denied the claim of the plaintiff and also denied the correctness of the plaint map filed by the plaintiff. It was therefore, pleaded that the plaintiff did not have right to use the way from the side owned by the defendant. The defendant also denied that there was a customary way having width of 20 ft. as claimed by the plaintiff. The defendant lastly denied that the plaintiff had easementary right by prescription or custom and then

pleaded that the suit of the plaintiff was liable to be dismissed.

Both the parties have examined several witnesses to prove their case. They have also produced documentary evidence on record to substantiate their case. The Commissioner was also appointed by the Trial Court to inspect the spot. The Trial Court on appreciation of evidence tendered by the parties on record held that the plaintiff had proved the possession over the disputed property. The plaintiff further proved that the defendant obstructed the plaintiff's rights to use the suit way. The Trial Court, therefore, granted a decree of permanent injunction in favour of the plaintiff.

The first Appellate Court, in appeal filed by the defendant, however reversed the findings recorded by the trial Court. The first Appellate Court, on considering the entire evidence tendered by the parties, held that the plaintiff had not succeeded in proving his ownership over the disputed property. The first Appellate Court held that the plaintiff had further failed to prove that there was a customary right to use the suit way. The Court then held that the plaintiff had an alternate way to approach his suit field.

The findings recorded by the Court are pure findings of facts, which are based on proper appreciation of evidence on record. These findings do not give rise to any substantial questions of law.

The second appeal is dismissed with no order as to cots.

JUDGE

JSA.